Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x
CAP 111 ENTERPRISES LLC,

Plaintiff,

-against- 22 CV 1408 (CS)(AEK)
Conference

MANHATTAN BEER DISTRIBUTORS LLC and SIMON BERGSON.

Defendants.
----------x

United States Courthouse
White Plains, New York
April 24, 2023

B e f o r e: THE HONORABLE ANDREW KRAUSE,
United States Magistrate Judge

WITTELS MCINTURFF PALIKOVIC
Attorneys for Plaintiffs
BY: STEVEN WITTELS
J. BURKETT McINTURFF
ETHAN ROMAN

DAVIDOFF HUTCHER & CITRON LLP
Attorneys for Defendants
BY: ERIC PRZYBYLKO
PETER RIPIN

Proceeding recorded via digital recording device

THE DEPUTY CLERK: This is the matter of Cap 111 Enterprises LLC v. Manhattan Beer Distributors, Docket Number 22CV1408, the Honorable Andrew Krause, presiding.

Counsel, note your appearance for the record, starting with counsel plaintiff's counsel.

MR. WITTELS: Steven Wittels for plaintiffs and the proposed class.

Good morning, your Honor.

THE COURT: Good morning, Mr. Wittels.

MR. McINTURFF: Burkett McInturff for plaintiffs in the proposed class. Good morning.

THE COURT: Good morning, Mr. McInturff.

MR. ROMAN: And Ethan Roman for plaintiffs in the proposed class. Good morning, your Honor.

THE COURT: Good morning, Mr. Roman.

MR. RIPIN: Good morning, your Honor.

Peter Ripin from Davidoff Hutcher & Citron for the defendants.

THE COURT: Good morning, Mr. Ripin.

MR. PRZYBYLKO: And Eric Przybylko also for the defendants.

THE COURT: Good morning, Mr. Przybylko.

Okay. It's nice to meet all of you in person or in any fashion the first time.

We'll be going back and forth on a lot of different

issues today. You're welcome to stand to address the Court if you would like to. You're also okay to sit if you prefer. I know some lawyers feel like they can't keep themselves in their seat when it's time to address the Court. So really it's up to you. But it to would be fine with me if you want to sit so you're not having to pop up and down.

Just make sure whether you're standing or sitting that you're speaking directly into the microphone because we are making a recording of this proceeding. As you can see, we don't have a court reporter.

You'll be able to order the transcript. I advise you to order the transcript. It probably will be helpful because we're going to go through a lot of disputed issues. To the extent you have any objections to any of my rulings that you want to take to Judge Seibel pursuant to Rule 72, you'll need the transcript for that certainly. Not saying you will necessarily have to do that, but that is how we will go about it because I do intend to rule, I would expect, on many of these issues, if not all of them, after hearing further argument from the parties today.

Since this is our first conference after Judge Seibel's order of reference, let me just go through a few things at the outset.

First, as you've probably seen, I did issue my standard discovery protocol order in this case on docket at ECF

Number 60. The deadlines and procedures set forth in my order are pretty closely aligned with Judge Seibel's standard case management plan.

There might be a couple of minor differences. I haven't studied them side-by-side recently, but to the extent there are any differences, since this matter is now before me for all discovery-related issues, you should follow the deadlines in my case management plan.

I know we're sort of in a bit of a hydrid situation with this case because you have matters that are currently pending before Judge Seibel. There's a motion to dismiss, which obviously will have an impact on the discovery as we move forward. I know there's been recently another motion to supplement the second amended complaint, because that is intimately tied with the motion to dismiss, and the issues related to the challenge to the claims. In the first place, Judge Seibel is handling that. As you have seen, she issued an order deferring decision on that. So she and I will be in touch as needed about different aspects.

If there's any confusion about who's handling what, we'll figure that out and try to report back to you and try to give you as much clarity as possible. But as a default matter, you should expect that any discovery-related issues for the remainder of this case will come to me and so you should follow my standard discovery protocol order for that purpose.

Now, I often tell the parties at these initial conferences about my standard form, confidentiality and protective order, but I know there's already a confidentiality and protective order in place in this case.

I will point out that the order of reference for general pretrial supervision does include within it an order of reference for settlement. So if there comes a time when the parties would like to have a settlement conference with the Court, I'm certainly open to that and willing to assist you with that, if it will be helpful. I'm sure we're not at that point yet since we haven't even started producing documents and there's the motion to dismiss pending. But as this case progresses, I suspect we're going to be seeing each other with some frequency. So if there comes a point where you think having a settlement conference would be a worthwhile exercise, talk to each other about it, let me know. You don't have to go back to Judge Seibel and request a separate order of reference for settlement purposes.

So I've reviewed the docket, which is fairly lengthy, given that we haven't even started producing documents yet, but I understand why that is with multiple amended complaints and the motions and various other things.

Just to make sure I'm clear, it's my understanding that discovery is moving forward with respect to documents and written discovery, but that depositions and expert discovery is

essentially stayed pending resolution of the motion to dismiss. I see nodding heads.

Mr. Wittels.

MR. WITTELS: Yes, your Honor, that's correct. On the initial conference we had with Judge Seibel -- well, maybe more than one -- but where defendants proposed they would file a motion to dismiss, we did ask the Judge could we continue on or at least get discovery started, because regardless of whether the case remained in federal court or state court, there would be discovery needed. Quite a bit, actually.

So she said yes, you can get started on the written discovery.

THE COURT: Okay. And we have a feature in this case which we don't see in every case where you actually have a deadline for the beginning of document production, which I know we've extended, and the deadline for the end of document production. I actually find that to be helpful, so we're not in a complete black hole of wondering when the documents are coming and what the schedule is going to be for that. But I understand that you've negotiated that. We've made a couple of adjustments so the document production is currently scheduled to begin on May 8 and end on August 31. It's going to be a rolling production with productions coming at least every 21 days, if not more frequently than that.

How am I doing so far?

MR. WITTELS: It's accurate, your Honor.

THE COURT: Okay. Good.

Mr. Ripin, if there's anything you want to weigh in on, please do.

The ESI protocol, we've extended the deadline for that a couple of times. That's currently due on Friday. I understand you're still working on outstanding issues. There may be disputes. If there are, we'll come to that at the end. If there are disputes on that, we'll come back and talk about them at our next conference in short order because, obviously, we'll only get that in place before we get too far into this rolling production period.

The last thing I'll mention is I've reviewed all of the letters that pertain to the discovery disputes. Those are at ECF Numbers 53, 54, 55, 62, 63, and 64. And as I understand it, the issue that was raised in ECF Number 55, defendants' letter motion has been resolved per the letter that I received from plaintiffs on March 27. That's ECF Number 64.

So that issue is fully resolved; is that correct, Mr. Ripin?

MR. RIPIN: That's correct, your Honor.

THE COURT: Okay. That is everything that I wanted to just mention at the outset in terms of my familiarity. I have read the complaint also, so I understand the general contours of the allegations, which is why I understand why

there is a case of beer on the table. I do appreciate the visual aid for purposes of understanding some mechanics of exactly what's in dispute.

If there's another reason, though, you've brought that, you could let me know, Mr. Wittels.

MR. WITTELS: Actually, it's empty, your Honor. Although we would go to the car and (indiscernible).

THE COURT: I think that's fine for 11:08 on Monday morning but thank you.

Okay. So I'm ready to jump right in to the discovery disputes. I will mention, by the way, only because I was having a conversation about it with some colleagues last week, one or more of the letters referred to me as Magistrate Krause. My proper title is Magistrate Judge. There are people who are Magistrate Judges who get very agitated about that. I am not one of those people, just to be clear. I don't even remember who did it. It does not matter to me all that much. But for future reference, the proper title of the United States Magistrate Judge is Magistrate Judge. That changed at some point, I don't know, 30 years ago, and there are people who were involved in ensuring that that change was made that feel very, very strongly about it. That's something I've learned in my two-and-a-half-years on the bench. So I just point that out to you for future reference.

Those who advocate on this issue would say that

referring to a Magistrate Judge in federal court as Magistrate would be akin to referring to a District Judge as District, which of course no one would ever do. You can say Magistrate Judge, you can just say Judge, but you shouldn't just say Magistrate.

So again, I hold that against nobody. As I said, I truly don't remember even which letter it was, but I noted it. And because it was fresh in my mind, I thought I'd point it out to you.

All right. So let's turn to the issues in the letters. I have reviewed the letters. I've reviewed the cases that you've cited in the letters. There are a couple of different buckets. Obviously, the letters are broken up to discussions, on the plaintiff's side, into discussions about interrogatories and document demands, although there's one large category that really cuts across both, the interrogatories and the document demands.

So let's start with the large category of materials that I think can fairly be described as the discovery on discovery types of documents and interrogatories.

I understand very well the reason why plaintiffs are looking for that information, to try to facilitate an informed discussion about where information can be located, which witnesses are going to be most relevant for assessing the scope of productions, and really getting at the heart of the

substantive issues in the case, but I don't know that I've ever seen a case where these types of interrogatories and document demands have been propounded at this stage, where we haven't even had any document production, we haven't had any reason to believe that the defendants' productions are going to be inadequate in any way or any gaps in the production can be identified. The productions haven't even started yet.

So I start from the premise that I typically see these types of requests after we've run into problems along the way, and that is a framework that has been discussed by many judges within this district. There's the case that was cited in the defendants' letter from Judge Liman, which, interesting, that's the *Haroun* case, 20CV100 2020 WL 6828490, which is a case I wasn't reading for the first time in connection with this set of disputes. Interestingly, I noticed that the plaintiffs made reference to my colleague, Judge Parker, who's issued various orders on ESI and is a very sophisticated thinker on this set of issues, but it's worth noting that a couple of the key cases cited by Judge Liman in *Haroun* are Judge Parker decisions that, frankly, cut against plaintiff's position here. So I'll just point all that out.

I'll turn to you, Mr. Wittels. You can hear my skepticism about this line of inquiry at this stage, but tell me why this is the case where we should have this kind of discovery up front.

MR. WITTELS: Judge, if it's all right, I'll have Mr. McInturff address this.

THE COURT: Absolutely.

Mr. McInturff.

MR. McINTURFF: Good morning, your Honor. Burkett McInturff.

First, just a global point. Your Honor's points are well taken, and I will say the parties have approached ESI with transparency thus far. To preview a bit, we do have a limited number of disputes on ESI protocol that, generally speaking, from my perspective, this is not a case where we have widely divergent world views about how discovery is going to take place. And I say that because what we've worked out is a transparent process where we discuss and negotiate collection, custodians, et cetera.

And the best analogy I've heard for this type of discovery planning process is Go Fish. And when the defendant is holding all the cards about the information and we are in a position to negotiate the ESI custodians and the non-custodial data sources, et cetera, if we don't have information about the underlying data in the background, we can't ask for what we believe, in terms of good faith negotiations, we can't ask that data be collected.

Now, how do you solve that? The vast majority of cases solve that on the other end. We find the doc, we find

the source, then we approach the defendant and we say collect the -- now collect the source. We know it exists. That obviously works in many cases. It is much more expensive to do it that way. It's more time consuming. It leads to longer --

THE COURT: For both sides, frankly.

MR. McINTURFF: Correct.

And were this not a case where the parties are both well advised and sophisticated and are having fruitful discussions, the front-loading of ESI discovery could be more difficult. But I don't believe that that's the case here and I think Judge -- and I think that explains why both in Judge Parker and in Judge Francis' jurisprudence before that, there are conflicting rulings because each case presents a different scenario.

We've litigated before Judge Parker in a very large class action and she implemented sort of a hybrid of what we're proposing. And I'll note what we're proposing comes from the Sedona Conference's Jumpstart Outline, which was endorsed, has been endorsed by the Federal Judicial Center.

The case we cited that we're relying on most is Judge Francis' most recent articulation of these principles. And I think, I think he hits the nail on the head, which is, we're going to have transparency and cooperation, but without, without transparency, cooperation doesn't hold the same weight as expected. And the other big principle here is 26(g) is the

reasonable search and getting to striking the right balance between proportionality and outcome. And we think here, if we're able to understand more about the defendants' electronic systems in advance, we'll have a more fruitful conversation and we won't have to do as much on the back end.

That said, we know how to do it both ways. But I -- we've had success in front-loading ESI and not having to go back and do multiple collections. I mean, I can't make any promises, obviously, but we've had success with this method in the past, and that's why we issued the discovery we issued.

I will say I've had cases where both my colleagues on the plaintiff's side and my adversaries on the defense side viewed this exchange of information as not even necessary to issue formal discovery as part of the 26(f) discovery plan process.

So I mean, ultimately it depends on how the Court wants to manage the case, and we're fine with however the Court sees fit to do that. I do think that there are benefits to front-loading these issues, especially when you have counsel that understand them.

THE COURT: All right. Well, look, that's the best case for it, Mr. McInturff. I appreciate that. Thank you.

Mr. Ripin, let me turn to you.

MR. RIPIN: Yes. Thank you, your Honor.

Your Honor referenced the *Haroun* case and the *Haroun*

case is sort of consistent with all of the other cases out there when dealing with this issue. Courts consistently require the parties seeking this discovery on discovery to provide an adequate factual basis to justify the discovery and they closely scrutinize the requests in light of the danger of -- and this is quoting now -- in light of the danger of extending the already costly and time-consuming discovery process ad infinitum.

Courts have also held that the producing party is in the best position to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own ESI. As a result, courts have not micromanaged the parties' internal review processes and they've not permitted discovery on discovery in the absence of evidence of good cause, such as a showing of gross negligence in the review and production process, the failure to produce relevant specific documents known to exist and likely to exist, spoliation, other malfeasance or deficiencies.

Here, as your Honor noted, we haven't even started producing documents yet. They've made no such showing. Discovery has just begun. Neither side has produced anything. And in the *Haroun* case, what the Court stated was that -- and they were already well into it at that point -- but the Court stated if there were gaps in the production of ESI, then what -- and I'm going to quote now, because counsel referred to the

sources, knowing the sources -- and then the Court says, contrary to the plaintiff's assertion, plaintiff does not need to know all of defendants' sources of ESI to determine whether documents have been deleted, and if so, whether they may be available from another source. What the Court said, the plaintiffs could inquire at depositions if there was a deficiency or a suspected deficiency it was a more appropriate procedure to inquire of the deponent, the 30(b)(6) deponent, whether documents that had not been produced or there were obvious gaps in the production. We have spent -- when you talk about transparency, and I thank counsel for his statement, we've worked in a collaborative manner, frankly, for over two months now to negotiate the ESI protocol, we're just about there. We're just about -- you know, there may be one or two issues outstanding. But after a lot of effort, a lot of meet and confers, good faith on both sides, we have worked it out.

So I think the rationale that they need this information for purposes of entering into an informed protocol and transparency, I think it just doesn't apply in this situation. We've been very transparent, but in the absence of any showing or -- which there couldn't be since we haven't started producing documents, of any deficiencies in a production, I think at this stage it's just not appropriate.

THE COURT: Okay. You left out one of my favorite quotes from *Haroun*, though, Mr. Ripin, which is when Judge

Liman writes, as a practical matter, the party who engages in the collection, review, and production of ESI, without conferring in advance with her adversary, proceeds at her peril. If it turns out that the production was not reasonable and proportional, she might have to do it again. But I think you understand that, and I think both sides understand that here.

Look, Mr. McInturff, I take the point that there are cases where the parties mutually agree that having a more robust exchange about this at the outset, even perhaps without the need for formal discovery demands or interrogatories, is beneficial to the process. And that is to be commended in a lot of ways, because I think that can lead to much greater efficiencies. But the state of the case law, I think, is pretty clear that in the absence of that type of voluntary agreement to proceed in that way, the process really needs to start the other way and the more, what I'll refer to as the more traditional way, which is, give the defendants, to some extent, or the producing party, because it could be true of the plaintiffs, too, the benefit of the doubt and the trust in counsel's compliance with the obligations of the Federal Rules when it comes to discovery and counsel's education of the clients as to those obligations and work through those issues as they come up later on in the process.

So the last part of that quote from Judge Liman is

instructive as well. If a party decides not to turn over the sources of its ESI, the Court may not require it to do so without an adequate factual basis. And that is the way I view the situation in this case, especially given where we are, at the very beginning. I commend you all for working together so far and working out some issues, and whatever issues you can't work out, you'll bring to me and I'll help work through them and resolve them.

I always like to praise and encourage the collaboration and efforts of counsel when they seem to be fruitful and, look, when you get to an impasse, that's what there are judges for.

So, here, I am going to sustain the objections from the defendants to this group of interrogatories and document demands regarding discovery on discovery. In other words, sources of -- what's referred to in various places as ESI source transparency, knowledge of IT systems, ESI preservation efforts, individuals who are recipients of litigation holds, individuals with access to relevant file shares, potential witnesses. That really includes interrogatories 7 through 9, 11 through 15, 3 and 4, 6, 8, 10, and 11. I know I jumped all over the place with those numbers, but I was following the way you put them together in your letters.

Those are all in the realm of this type of discovery on discovery I think is premature at this stage. Obviously,

those objections are sustained, but without prejudice to renewing those interrogatory requests come some future point in discovery if it turns out that you've reached an impasse and there is actually an adequate factual basis to require defendants to turn over that type of material to ensure that the plaintiffs have access to all of the discovery to which they are entitled. That also covers the requests for production numbers 20 through 27 as well.

All right. There are a few other issues that didn't fall specifically within that framework. I wanted to start with that, because I've covered many of the disputes, but there are some other things to talk about.

I will note, by the way, just as a last point on this, that while I'm not requiring the disclosure of the litigation hold recipients, that does seem like something that could be a useful tool to facilitate discussions in terms of understanding who the right witnesses and custodians should be both for documents and depositions down the road. You know, I'm not sure that I've seen a specific request along those lines. I thought it was a creative idea and way of approaching it. I understand the objections and I've already sustained the objections. I'm not trying to split the difference on that one. I just thought I would point out that from where I sit that seemed to be an interesting and creative way of trying to get at the issues and one of the less intrusive and burdensome

requests at this stage of the process.

Do with that what you will, Mr. Ripin. I'm not sure if you wanted to make any disclosures along those lines, but I just thought I'd mention that, since we were talking about it.

Okay. Let's talk about some of the other issues that were raised. I'm going to jump around a little bit because these other issues kind of -- are not as intertwined with one another.

Let's talk about the relevant date range. That was an issue identified in the letter motion at ECF Number 54. I understand that the relevant class period goes back to January or February of 2016, looking back six years.

What the plaintiffs seem to be looking for is an expanded scope on the date range because it's the plaintiff's position that some of these practices started much earlier in time. I understand part of the response from the defendants is, well, they've known about that for a long time. They've known that these practices have been in place earlier than 2016 from prior to depositions or whatever else the case may be.

I'm not sure when the plaintiffs learned about the age of the practices is all that relevant to our discussion here today, so I think we can just set that aside. I mean, they're asking for this now. Whether they could have asked for it earlier is sort of immaterial, because they could always submit new document requests or amend their current document

requests.

But what I do find salient about the defendants' response is that there are certain requests, numbers 5 through 8, where even in the original requests there were no time limitations. Those -- I don't have 5 through 8 because you didn't provide me with the complete set of document demands, it was just the ones that you were focused on, I think. But I think I have 5 and 6, so that gives me a flavor, at least, of what 5 through 8 would be. If I've missed them in the papers, you can point them out to me and I apologize for overlooking that.

MR. RIPIN: I think, your Honor --

THE COURT: Were they attached to yours?

MR. RIPIN: Yeah, in Exhibit A to our, one of our letter responses.

THE COURT: I see. There they are. And you even underlined them for me.

But you only gave me the requests. You didn't give me the responses.

MR. RIPIN: Correct, your Honor.

THE COURT: Right. So I don't know exactly what your responses were. You represented to me that you didn't seek to limit the date range.

MR. RIPIN: That's correct.

THE COURT: So for future reference, it would be

helpful for me to have the responses, because presumably you restated the question in your response anyway. So it's always easier to have the responses because then I get both sides' position on the issue.

But in any event, those requests seem to go to the heart of what plaintiffs are looking for in terms of the older documents. That is to say, documents and communications regarding the development and implementation of Manhattan Beer's 10-cent deposit fee. Documents and communications with Manhattan Beer management or governing bodies regarding disclosure of the 10-cent deposit fee. Documents sufficient to identify the person or persons responsible for the development and implementation of the 10-cent deposit fee for cardboard. And documents and communications with Manhattan Beer management or governing bodies regarding whether or not to charge certain customers or groups of customers the 10-cent deposit fee. For those, there's no time limit.

So to the extent the point from the plaintiffs is these policies have been around for a really long time so we should be able to go back further in time. Well, in terms of the development and implementation of the policies and who was charged and what went into that, you're already getting those documents going back a greater period of time, which means inevitably that the searches that the defendants are going to have to undertake will include searches that go beyond the

January, February 2016 time range anyway.

It's not clear to me why you would necessarily need that broader time range to be applied to all of the document demands in the entire set of requests.

MR. McINTURFF: Could, your Honor, this is Burkett McInturff.

THE COURT: You can bring the microphone closer to you so you don't have to lean in.

MR. McINTURFF: To me, just to clarify one point, when we -- the proposal that is on the table from plaintiffs is you don't have to do this for email. We just want you to do it for the paper documents and the electronic files that you're already searching that are responsive to the larger set of document requests.

So the example we gave to defense counsel is you're looking through a file archive and there is a document in the archive that is potentially responsive, but it has a last edited date that is before January 1, 2016.

THE COURT: I understood the way you framed it. It's just that potentially responsive is defined in part in relation to the date range. I mean, what makes it responsive or not responsive in part is when it was created or last edited. So with respect to these four categories, which are broadly phrased, and as I understand it, though I don't have all of the responses, defendants have not -- defendant has not objected to

on the grounds of an overbroad time limitation, you're going to get that stuff anyway. It's just all the other categories such as damages-related information or database information from 2014 or 2013 or 2012. I mean, why do you need that?

MR. McINTURFF: Well, it's actually -- it's more related to answering the question of what do the defendants know and when did they know it and it's not -- we're not focused on that type of information, we're focused on, for example, complaints by large companies that spotted this fee and were able to get out of it. Different, different conduct that occurred during the multi-year course of the challenged conduct, and again, if it is saved alongside otherwise responsive documents.

They're going to be looking for documents that generally fall into the category of, you know, what did you know and when did you know it. And yes, there's the implementation period, but then there's what information they got from customers, competitors, internal whistleblowers during the relevant period and if it's -- if it's there, and the answer that we discussed it during one of the meet and confers was what if the relevant memos are in folders labeled by year, 2015, 2014, 2013?

And our response was, if you have a folder that you believe contains relevant information and you're collecting 2018, 2017, and 2016, and there's 2015 to 2012 sitting right

next to it, we should go ahead and collect that, because you've already made the determination that there are responsive documents within this -- within this sort of sphere, and it doesn't make sense from a practical standpoint now that we know that this started in the '80s, and again we're not asking for them to go back for email because the volume of data is going to be quite large. So it's to capture paper and ESI that is already kept in the ordinary course.

And we don't think that that is -- we think that's a fair balance at this stage of the case given the revelations about how long the conduct has gone back.

THE COURT: Okay. But let me just ask you a more precise question.

Are there specific document requests for which you're seeking this older information?

MR. McINTURFF: Yes.

THE COURT: And others for which you are not seeking the older information? Sounds like the answer to that should be yes.

MR. McINTURFF: The answer is yes, but it really depends on how the document is housed. So for example, the database --

THE COURT: Why does it depend on that as opposed to what the substance of the request is?

MR. McINTURFF: Fair enough. I mean, it's a fair

point. I was trying -- I'm trying to minimize their burden, but your Honor's point is a fair point.

THE COURT: Because when you said if they're already looking for a particular type of document that would go to the question of what they knew and when they knew it, they're going to be looking in certain places for that but not other places.

MR. McINTURFF: Correct.

THE COURT: Okay. So it would seem to me that perhaps a compromise on this would be -- look, there are already four categories of documents, broad categories, too, by the way, where defendants are already going to be looking for some larger period of time. There's no time limitations. I'm not sure if you separately negotiated what that time limitation should be, going back to the beginning of the earth or it gets just goes back to 1990 or 2010. I don't know.

But one possible path forward, it would seem to me, is if there were specific requests for which you were looking for older information, that is, information that predates 2016, then the defendant might be able to consider those requests individually, because there might be a more compelling argument to say, yes, 2016 information may be relevant for X, Y, and Z categories because it goes to knowledge, but it's not required or not relevant for A, B, and C categories because those really go to damages.

So let me hear from you on that, Mr. Ripin.

Obviously, I understand your concern about going back too far. I understand the point about the categories you've already agreed to go back further on, but it seems at least possible to me that there may be a middle ground here where there are certain categories where a pre-2016 search would be appropriate.

MR. RIPIN: Your Honor, we -- the objection that we had, which is the one your Honor articulated, that this broader time range was being applied to all of the requests. I mean, we went back and forth on the meet and confer on this, and the only answer we had was, well, if you're in that, you know, closet and there's another folder there, it's easy -- easily accessible to collect. But the burden is in connection with the review. It's driving up the cost for additional review time. We haven't had the discussion about specific requests. I think it's certainly a reasonable ask. We never got there.

THE COURT: I mean, the other part of the burden is how many closets do you have to look in? And if there are closets that are adjacent to one another, just to use the metaphor, I mean, if there are closets adjacent to one another -- I'm thinking of my last office where I had a litigation closet and, you know, it had two sets of doors. When I filled up one of them, I had to go to the next one.

But are we saying if all the documents from one period of time are in one closet you don't have to search the

adjacent closet? I mean, that seems like an arbitrary cutoff point.

The question to me is, what is actually substantively potentially relevant from the pre-2016 period. Because I could very well imagine if I were presented with these objections or these requests by way of a motion to compel, that I might view them differently for different types of requests.

So it's not really just a matter of where you're looking, it's a matter of what you're looking for and why you're looking for it. So on that one, you'll learn as you get to know me that it's not my interests necessarily, I'm not looking to just automatically kick things back to you, but at the same time I don't want to issue a ruling that is imprecise or it doesn't really address the nuance of the particular issue.

So on this one I am going to send it back to you for further discussion to see if you might be able to figure out if there is a narrow set of additional requests beyond the four for which the defendant has already agreed to search a broader time period, where the plaintiffs are really interested in the earlier documents and have a good faith basis for suggesting that those documents have relevance to the claims at issue in this case.

So that should be the subject for the meet and confer discussions, and you can report back to me at the next

available opportunity as to the scope there.

All right. Let's turn to the issue of complaints, since that was alluded to briefly in that last argument. The defendants' position is complaints other than with respect to cardboard box deposits are a fishing expedition. That is a fairly narrow position, I would say. But the plaintiff's position that we should have all complaints because we don't know how customers might have referred to the issue that we are now focused on in this lawsuit certainly seems like an overbroad request. So this may be another one where I'm going to encourage you to talk further about it.

I'm not sure if there's a set of key words. I'm not sure how you're even going to search for complaints about the topic that you, Mr. Ripin, have agreed to search for, meaning the complaints about cardboard-box deposits. I'm not sure if those are kept in a particular way or in a particular filing system or structure or if you are going to run a general search using terms and connectors in a database or whatever you're going to do. This seems like one where there's some room between cardboard box only, it has to use the word cardboard, it has to use the word box. It has to be some sort of magic language that's only going to capture one or two complaints versus any time anybody complained about a late delivery or the delivery person acted unprofessionally or whatever, some gigantic universe of complaints that will have absolutely no

bearing on what we're here to discuss.

So I'm not sure how we define that. I mean, the term that is used in the request is deposit practices. That's a capitalized term, I see, but I'm not sure I have the definition of it. Again, if there's some document that has the definition and I've missed it, I apologize, but I don't know that I know what the definition of deposit practice is.

So I could see that being a valid narrowing term, assuming the definition is reasonable, if it has to do with the cardboard deposits. I mean, there's no dispute that that's responsive. But it has to do with bottle deposits generally or why is this fee --

MR. RIPIN: Bottle deposits generally, your Honor.

THE COURT: Right. So why is that too broad, Mr. Ripin? If it's limited to that and not the other nonsense about whatever complaints your client may receive about all kinds of things having to do with the widespread logistics and delivery operation?

MR. RIPIN: Your Honor, Manhattan Beer charges the 5-cent deposit, the state-mandated deposit pursuant to the Bottle Bill, and there's the 10-cent deposit on cardboard boxes, basically the issue in this lawsuit.

THE COURT: Right.

MR. RIPIN: And then there's a $30 deposit on kegs. So there are three discrete deposits, if you will, that are

charged to customers. The only one that's at issue in this lawsuit is the 10-cent deposit on cardboard boxes. They alleged that it was a deceptive billing practice, in essence.

THE COURT: I understand. But they've also alleged that it was hidden, that it wasn't itemized on invoice. And I'm not commenting on the veracity of those allegations, I don't have any of the documents and it's at an early stage -- right? -- this case, but they've alleged that it was not transparent to customers that they were being charged 10 cents for a box deposit.

So the $30 keg deposit seems pretty distinguishable, in part because it's a substantial amount, and also because it's an entirely different -- I understand it's a container that has beer in it, but other than that, it's fairly different than the box and the bottle deposit. So one could imagine customers not fully appreciating -- again, this is the allegation in the complaint, right, that customers didn't appreciate that they were being charged this 10-cent deposit and they wouldn't necessarily have known to complain about it as the 10-cent, cardboard-box deposit, because that wasn't something that was an itemized expense on their Manhattan Beer Distributors invoice.

So it strikes me as too narrow to say, well, if the customers didn't manage to figure out that they should be complaining about a cardboard box deposit, then we're not going

to produce other documents about complaints. Again, I think there would be a perfectly reasonable and valid exclusion, a carve-out of keg-related deposits, because that seems to me different in kind, in part, because it's $30, I think you just said, as opposed to 5 or 10 cents. Someone is going to notice that, I would think. It's just a different kind of item.

But deposits, complaints about deposits, whether they're bottle or box-related deposits, seem much more within the realm of material likely to be reasonable, proportional to the needs of the case, both in terms of the plaintiff's need for understanding what customers were saying, and in terms of the burden of -- proportionality burden on the defense side.

MR. RIPIN: What I think we were objecting to, your Honor, is the idea that there's going to be some fishing around for new claims, as it were. You know, that we didn't know about this claim and we want to find out so we can bring a new lawsuit, a new class action.

There's no allegation that Manhattan Beer failed to charge the state mandated 5-cent deposit or that they failed to collect it or refund it. That's nowhere in the pleading.

I understand what your Honor is saying in terms of the allegations. I believe, that the searches that we would conduct in response to this request and others would, in fact, capture that sort of responsive document, if it were out there.

But we didn't want plaintiffs, you know, fishing

around for new claims. If a customer claims that the -- that they shouldn't have to pay a 5-cent deposit, or, you know, something like that, that is -- certainly would not appear to be relevant.

THE COURT: Okay. But, again, the problem that we have is the allegation is that the fee itself, the 10-cent fee was not transparently disclosed. I mean, that's the entirety of the case. I mean, that's a very long complaint so there's more to it than that, perhaps, but that's the crux of it.

And to the extent there are complaints that sort of get at the issue maybe in a roundabout way, or why am I being charged all these deposit fees, what's that about, I think you're right, Mr. Ripin, that your searches likely would pull that up as a responsive document or a potentially responsive document. But the way you narrowed your response to say you would only produce documents that are regarding cardboard box deposits, I'm not sure using my example if that's a document you and your team would consider to be responsive but I think that's a document that would have to be produced. Because, again, that allows the plaintiffs to evaluate whether the company, the defendant, had knowledge of complaints or took actions in response to those that might be relevant to the overall claims and defenses.

So let me put it this way. I think that to the extent we're referring to the deposits and the deposits include

keg deposits, it shouldn't include that.

I don't think you're really intending to include that, are you, Mr. McInturff?

MR. McINTURFF: No, your Honor. And I'll add that the defined term deposit practices was the subject of much discussion and has been adopted for, I would say, the lion's share of the discovery request by defendant. We were able to reach agreement on the use of that term with respect to, you know -- as part of the overall discovery.

So I don't think that it would be overly burdensome if the defendant adopted that term for this particular set of requests. And when it comes to keg deposits, I think they would fall out as not being relevant, but I will say one of our -- one of the topics we're exploring in this area is the company's knowledge about what customers knew about their receipts. I think it's fairly common knowledge that people don't scrutinize their receipts, and that we would expect the company to have documents about that more generally in terms of communications about customers not appreciating what types of deposit charges are there. So that's why we developed this term, deposit practices, and it's generally related to the collection and billing for these deposits as required by the Bottle Bill.

So again, I think the easiest course here is since the defendant has adopted deposit practices, we would ask that

they adopt it for this response, and if they run into anything that is overly burdensome, they reach out to us, because a bunch of emails about kegs doesn't do us any good either so --

THE COURT: Okay. Mr. Ripin.

MR. RIPIN: Yes. Just wanted to respond that a number of plaintiff's requests use the term 10-cent deposit, 10-cent deposits. In other words, the requests themselves distinguish between deposit practices, which is a broader term, intending to encompass -- it's defined so as to encompass -- encompass all of Manhattan Beer's deposits versus if you go through the request you see a number of them are limited to the 10 cents.

THE COURT: Okay. But this one wasn't. This one uses the broader term.

MR. RIPIN: This one was not, and that's the reason for our objection with respect to this.

THE COURT: I'm not suggesting that the objection wasn't well taken, I just -- I'm overruling it.

So I'm going to require that the term deposit practices be applied here because for all the reasons I have said, I think it's likely to capture at least some information, material that would be relevant to the claims here and I think that, while there will be some additional burden on the defendant in terms of conducting that search, I think it's certainly well within the bounds of proportional to the needs

of the case.

I am excluding, though, from the responsiveness, despite the point that Mr. McInturff just made, I am excluding from the responsiveness, the production, any complaints that are exclusively related to kegs, because that's just not directly on point here or even close enough to being on point.

Take the broader idea, Mr. McInturff, that we're talking about scrutinizing receipts generally, but that's starting to get a few steps too far removed from the claims that are really in dispute here.

So that broader -- the objection with respect to the term deposit practices is overruled here and the search and production should proceed in accordance with the contours that I've laid out.

MR. RIPIN: Judge, before we move to the next point may I confer with counsel on one point?

THE COURT: Sure.

(Pause)

MR. RIPIN: Thank you, your Honor.

THE COURT: Okay. The next issue is with respect to database data. There are a couple of different categories when it comes to that. One is with respect to the interrogatories, interrogatory number 5, seeking aggregate class-wide damages data, including the number of customers charged, not received and refunded, and customer complaint data.

There's also a request number 28 in the requests for production that asked for all database data regarding -- well, this is the way it's written in this document. It says all database data regarding that involves or touches on Manhattan Beer's deposit practices, including field trees for all databases.

I carved that out from the prior discussion about discovery on discovery because it struck me as perhaps a bit distinguishable, so we'll talk about that.

But in terms of the interrogatory number 5, one -- we'll just address this in pieces -- one part of the defendants' objection which is respect to (f), 5(f), the number of customers that who complained to Manhattan Beer regarding deposit practices, I do find that to be outside the scope of what's appropriate under Local Civil Rule 33.3(a). I think you're going to get that information essentially through what we've just discussed in terms of the document production regarding complaints. So I am going to sustain the objection with respect to 5(f) on that basis.

The argument about 5(f) being one interrogatory too many. I don't really think we need to get into an exercise of counting the interrogatories at this point, since I've ruled already that most of them would not require a further response. I don't really want to get into a debate about the subparts and whether those count as separate interrogatories. I realize we

may need to have that discussion at some point down the line, but I think we can defer that for today, unless somebody feels very strongly about that.

Mr. Wittels or Mr. McInturff.

MR. McINTURFF: No, that's fine.

THE COURT: Okay. Mr. Ripin.

All right. With respect to the remainder of 5, this also strikes me as something that is both potentially redundant in light of the fact that there is going to be documentary evidence produced in response to request number 3 that will capture a lot of this information. I think it's very close to the line with respect to Local Civil Rule 33.3. I don't think I've ever seen an argument that the computation of damages portion that's contemplated under Rule 33.3(a) as a basis for interrogatories should be applied in the direction you're attempting to apply it. That's usually a category of interrogatory that is directed at the plaintiff as to their computation of damages.

I'm not saying it's wrong to say that that's a basis for a damage computation as to the defendants, but that's something I'd like to think about and research more, but I don't think we need to do that here because there's going to a production of data and a production of information that's going to capture a tremendous amount of this information already in response to the document demands. So in that sense, the

document demand and the response, which is that defendant will produce documents responsive to demand number 3, will already provide a substantial amount of this information that's requested in interrogatory number 5.

Mr. McInturff, do you want to try to explain to me what I might be overlooking in terms of that?

MR. McINTURFF: Yes. If you could bear with me one second. I want (indiscernible).

Okay, so the -- let me back up and explain what we need because -- and I think the Court understands what we need, which is the actual data.

My understanding, though, is that the defendant is not willing to produce the actual data. My understanding is why we ended up bringing this issue, your Honor, is that the defendant will produce -- so in response number 3, those are documents and communications regarding the data. So that's internal analysis of the underlying data. Maybe one of those documents was generated in 2018. We can't build a damages model off an internal communication.

In terms of interrogatory number 5, the defendants' letter says we'll give you items A, B, C, and D, which we'd ask for in database format, but the defendant says they will produce documents reflecting items A, B, C, and D. In other words, document request number 3, an internal communication analyzing aggregate data is critical to this case, but without

the underlying database data, we can't build a damages model.

THE COURT: I understand the point.

Mr. Ripin.

It's just not clear to me that it should be framed as an interrogatory, as opposed to a document demand. I mean, you could make a document demand for a database also.

Mr. Ripin, I'll come back to --

MR. McINTURFF: If I could clarify, your Honor.

THE COURT: Yes.

MR. McINTURFF: We did make a document demand for a database. This interrogatory --

THE COURT: Which document demand is that?

MR. McINTURFF: I think it's 28 where we said all database data regarding --

THE COURT: Along with the field trees.

MR. McINTURFF: Correct.

THE COURT: Regarding that involves or touches on Manhattan Beer's deposit practices including field trees for all databases.

MR. McINTURFF: If I could clarify. We're essentially -- we've got -- this case is really about this receipt and this receipt has a bunch of data on it. And so we're asking for the data that they have in database format so that we can work with it and build a damages model.

And we ask interrogatory number 5 in terms of

aggregate data at the moment primarily so that we can -- we have a sense in the beginning of the case for settlement purposes, but also for class certification purposes, that we have a concrete admission about the number of potential consumers involved at the initial part of discovery.

So that's why we ask for -- we ask for and typically obtain tables showing 50,000 customers, whatever the number may be.

THE COURT: And why should that be for deposit practices and not just for the cardboard box deposit?

MR. McINTURFF: I don't believe it is broad for deposit practices.

THE COURT: Well, that's what 28 says.

MR. McINTURFF: No, no, no. Oh, oh, for the data. Oh, because the data is basically a database and we want to see -- again, what's on the receipt, the receipt has your keg refund, it has your bottle refund, it has how many bottles you bought. We want the customer data so that we can analyze the data. So it is broader and more --

THE COURT: I know that you want that, but why should you have that for this case, which is about the cardboard-box deposit?

MR. McINTURFF: We don't -- like, for example, we don't need the keg entry. We haven't gotten there, because what we asked for was the field trees so that we could

negotiate what's there because there's --

THE COURT: I understand that. That's fine. You're open to a discussion about what the scope of that should be.

MR. McINTURFF: Correct.

THE COURT: But your bottom line is you need to have data.

MR. McINTURFF: We need the data.

THE COURT: I understand that.

Mr. Ripin, I don't see how you're not going to produce data in this case.

MR. RIPIN: We don't have an objection, your Honor, to providing the aggregate data with respect to the 10-cent deposit. The total revenue received and the amount refunded, those, I believe, are the crux of it and we don't have an objection to that. What we object to is the much broader -- you know, I'm not sure which request we're on now.

THE COURT: We're sort of holding in both hands interrogatory number 5 and request for production number 28, which are, it seems to me, pretty related to one another, along with request for production number 3.

MR. RIPIN: So, I mean, 28 is about as broad as it could possibly --

THE COURT: I agree with that.

MR. RIPIN: -- get.

THE COURT: All database data is too broad. It's

very broad. But you just say you are not going to produce anything which --

MR. RIPIN: Right.

THE COURT: -- seems too narrow.

MR. RIPIN: So what we're willing to, as a compromise, your Honor, we're willing to give them the data with respect to the total revenue received and amount of money refunded with respect to this 10-cent deposit, which is, I think, what they're looking for.

THE COURT: They're also looking for information about the number of customers involved, which certainly seems relevant in a putative class action.

MR. RIPIN: Yeah, we don't have a problem with that.

THE COURT: Okay. We're negotiating it right in front of my eyes, which is great in the sense of trying to reach a compromise, but not great in the sense of it's not really ready for me to make a final determination on. Maybe what I've said has helped motivate you to have a further discussion, but I think you are going to have to go back to the drawing board on this one a little bit because, look, 28 says you're not going to produce anything. Interrogatory number 5 says you object on various grounds.

The response to request for production number 3, as interpreted by Mr. McInturff, and I think not unreasonably interpreted that way, talks about producing documents or

electronically stored information and there's a concern that that could be read to mean you weren't going to produce data in a database format, whatever program that might be.

And so what I hear you saying, Mr. Ripin, is yes, there are certain things that you acknowledge that Manhattan Beer Distributors will have to produce, that you will have to produce data and not just a summary Word document or PDF that reflects that data, that you'll actually have to produce some data in some form, but that you're not comfortable with the breath of request number 28.

If that's your position, I think that's a reasonable position, and then it's just a matter of figuring out exactly what the parameters of that are, and I'm going to encourage you to talk to each other about it as part of your ongoing negotiations, and you'll report back if you get to an impasse, but I think this gets us closer to at least an answer, closer than where it seemed to be from the submissions here.

So I'm going to put that one back to you to discuss further, but it feels as though we're making headway on that one.

When it comes to the field trees, I will say, I don't view that as discovery on discovery in quite the same way, because if you wind up producing a database, at a minimum the plaintiff should understand what the data is that they're receiving. That doesn't necessarily seem to me to suggest that

they should be able to receive the field trees of the entire database recordkeeping system from Manhattan Beer Distributors that covers all information that could possibly be captured. That is getting closer to the discovery on discovery issue.

But if there's some sort of database that's going to be produced extracted from a larger database because of relevance and proportionality concerns, at a minimum, the plaintiff should understand what those fields are that are being produced.

Does that make sense, Mr. Ripin?

MR. RIPIN: Could I just confer with my colleague?

(Pause)

THE COURT: Absolutely.

MR. RIPIN: Yes, your Honor.

THE COURT: All right, I believe that that covers everything that was in the letters.

I'm just looking at my notes. I have checked off everything, but I'm not 100 percent sure that I have that right, so let me turn back to you.

Have I overlooked anything inadvertently, Mr. McInturff?

MR. McINTURFF: No, your Honor.

THE COURT: Mr. Ripin?

(Pause)

MR. RIPIN: I think we're covered, your Honor.

THE COURT: Okay. For my benefit and for yours, I am going to direct that you order the transcript. We spent an hour talking about these things. There are going to be nuances and we may have further debate about what I meant, or what you meant, when we said certain things today. So please order the transcript. You can split the cost. I'll leave it to your good judgment as to how quickly you need to have it, whether that's overnight to inform your discussions this week or I think it's --

I always forget this, Ms. Brown. It's overnight, 3 days, 7 days, 14 days, right? Or am I making up the 3 days? I know there's a 7, 14, and 30-day option, and a next day option.

We've given away a lot of those papers recently. People have been ordering a lot of transcripts.

Here it is.

THE DEPUTY CLERK: It's 1 to 3.

THE COURT: 1 to 3.

THE DEPUTY CLERK: 7, 14, and 30.

THE COURT: Okay. So obviously you're familiar with these forms and the escalating expenses associated with them. So I do leave it to you to decide whether you need it in 1 to 3 or you need it in 7 seven or you need it in 14 in order to facilitate your discussions. There are a lot of people here, people taking good notes, but nevertheless, we'll have the transcript because experience has taught me that we're going to

probably need to refer back to it at some point and that way we'll have it when we need to do that. Once you do get it, please send a copy to my chambers' email address so that we can put it in our file as well.

All right, the next deadline you have in this case is Friday to submit the ESI protocol. I know you're still working on issues and it may be that you'll get to a point where you don't have any outstanding disputes, but it sounds like there may be some disputes still, and there are a couple of follow-up items here that are going to require further negotiation that may ripen into disputes so that we can continue to move this forward and make sure you can stay on your May through August production schedule. I'd like to have you back in for another conference soon. Probably the week of May 8 to discuss any disputes that may still exist after Friday, so that would give you about a week to negotiate -- give you the rest of this week to negotiate on the ESI protocol, to tee up any disputes that you may have there, and to continue to negotiate on these two issues in particular that I've sent back to you, and then to refine whatever objections or ongoing issues there might be with respect to those.

So I'm going to look for an in-person conference the week of May 8. We'll see what works best. I can do Monday morning, the 8th. Obviously, that shortens the meet and confer process a bit, so I would be inclined to do maybe Wednesday the

10th or Friday the 12th, if those are possibilities for all of you.

On the plaintiff's side, any preference?

MR. McINTURFF: I have to apologize, your Honor. I had to give up my phone, so I can't see my calendar, so whatever your Honor --

THE COURT: Okay, we'll make pick a date, and then if it doesn't work, you'll let me know. What we'll do is, we'll pick a date, and if it winds up not working when you get downstairs, you just talk to each other and propose some alternatives. We'll figure it out.

Mr. Ripin, do you have any sense of your calendar that week or do you have the same problem?

MR. RIPIN: Working at the same disadvantage as Mr. McInturff.

THE COURT: Good enough.

All right. So we're going to put this down then for May 10 at 11:00 a.m., that's Wednesday. We'll do it in the same courtroom.

The only reason I had said to you that we didn't know which courtroom we were going to be using is there was a possibility that one of the other judges was going to be conducting a trial here because there was a very lengthy criminal trial that was being conducted in that judge's courtroom, because the judge who was conducting that trial, his

courtroom is being redone. It's more detail than you need to know. But just so you know, this is my courtroom and this is the default location for any conferences with me. There was just that weird wrinkle for this particular conference, which is why we had to reach out last week about it.

In any case, May 10, 11 a.m.

We'll have letters with disputes due, affirmative letters you should submit by May 4. That will give you as much time as possible to get these issues resolved and work through as many things as you can.

And affirmative letters, as you did last time. Affirmative letters can come from nobody, one party, or both parties, depending on who has disputes to raise and then responsive letters on May 8.

So that's the 4th, which is a Thursday, and the 8th, which is a Monday; 4th for the affirmative, the 8th for the responsive.

And again, I'll look for your ESI protocol by the 28th, although now that we have this schedule set up, if you tell me that you would like to have a couple extra days until say, May 2nd or 3rd, if that would facilitate negotiations, I'm happy to give that you to and I can do it right now.

MR. McINTURFF: I think we're okay. I mean, I've got like -- I'm just waiting for a call back from our expert.

We're really close. I don't think we need to --

THE COURT: Okay. Well, again, if something changes, we can extend that by a couple of days without upsetting the rest of the schedule.

So we'll keep that date, April 28 for the ESI protocol, May 4 for affirmative dispute letters regarding anything, but I would expect it to be the ESI protocol and the outstanding issues we talked about today, and then responsive letters by May 8.

MR. RIPIN: I'm sorry to interrupt. I guess on the ESI protocol, which is due Friday, to the extent we have impasse issues, which we'll then --

THE COURT: Tee up on May 4, yes.

MR. RIPIN: Should we submit the ESI protocol as to the non-disputed matters on Friday or what's the best procedure with respect to that?

THE COURT: You're not going to want me to sign a partial protocol, though, right?

MR. RIPIN: Right.

THE COURT: So I mean, if there are disputed matters -- it doesn't really matter, I guess. I think you might as well just go ahead and submit -- this is partly why I was suggesting rolling it over a couple of days, just to give you a little bit more time.

MR. RIPIN: It may make more sense to do it that way.

THE COURT: All right, so why don't we extend the

date for the ESI protocol to May 4. I appreciate the question, Mr. Ripin. That was a better way of capturing the concern I was trying to get at myself.

So we'll make May 4 a deadline for the ESI protocol. If it turns out to be no issues, then great.

Yes, let's do it this way, just so it's not a moving target. We'll make the ESI protocol due May 3, and that way, if you have any issues, you'll know what they are and you can include those in the letter on May 4. Okay?

I don't want there to be some question about have you reached an end of your negotiation. I don't expect that to happen, but sometimes that can be a little confusing when you have too many overlapping dates.

So we'll make the ESI protocol May 3, any disputes regarding that or anything else by affirmative letters May 4, responsive letters May 8, and our next conference May 10 at 11:00 a.m. subject to you checking your calendars and letting me know if that turns out to be a problem. If it is a problem, one other possibility for me would be the 12th, the Friday, in the morning. That's wide open for me at the moment.

MR. RIPIN: I apologize. Just so that I'm clear. On May 3, assuming there are impasse items on the ESI protocol --

THE COURT: You should submit one document that has -- this is how I handle, for example, jury instructions. Right? It's a joint document where your competing proposals

are reflected in the same document.

So if sections 1 through 9 are agreed upon, that's great. Then paragraph 10 can show me plaintiff's proposal and defendants' proposal. Then 11 through 14 are agreed upon. And 15 can show me plaintiff's proposal and defendants' proposal.

If you want to annotate those using comment bubbles and tract changes, that's fine, there are a lot of different ways to do it, as long as I can look at one document and see both parties' positions and whatever objections you may have. It may be that it's just an objection to a particular word, you know, the word "not," or "large" or whatever it is, you can highlight that and put it in a comment bubble instead of reproducing an entirely near identical paragraph with just one word changed.

So I'll leave it to your good judgment as to how to present it, as long as it's comprehensible to somebody who hasn't been sitting in on all of your negotiations over the past several weeks.

Does that make sense?

MR. RIPIN: Yes. Thank you.

THE COURT: Okay. Thank you for the clarification, Mr. Ripin.

All right. With that said, is there anything further that we should address today from the plaintiff's perspective, Mr. McInturff?

MR. McINTURFF: No, your Honor. Thank you.

THE COURT: From the defendants' perspective, Mr. Ripin?

MR. RIPIN: No, your Honor.

THE COURT: Okay. We'll be back together in a couple of weeks. I'll look forward to your letters before then, and if there's anything that requires more urgent attention, you'll let me know. Okay?

MR. RIPIN: Thank you, your Honor.

THE COURT: We'll stand adjourned for today.

Thank you.

MR. McINTURFF: Thank you.

o0o